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**April 7, 1992**

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**APR - 7 1992**

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OF COUNSEL

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4/15/92  
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**FM EXAMINERS**

**Donna R. Searcy**  
**Secretary**  
**Federal Communications Commission**  
**1919 M Street, N. W.**  
**Washington, D. C. 20554**

**Re: File No. BPH-911230MB**

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

APR - 7 1992

Federal Communications Commission  
Office of the Secretary

APR 8 1992  
FEDERAL COMMUNICATIONS COMMISSION

In Re Application of:

ASF BROADCASTING CORP.

Application for Construction  
Permit for a new FM station,  
Channel 280A, Westerville,  
Ohio

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File No. BPH-911230MB

To: Chief, Audio Services Division

OPPOSITION TO PETITION TO DENY AND DISMISS

ASF Broadcasting Corp. ("ASF"), by its attorneys, hereby opposes the Petition to Deny and Dismiss filed by Ohio Radio Associates ("ORA") on March 26, 1992 with respect to the ASF application above-captioned. In response thereto, the following is submitted:

1. ASF specified the transmitter site utilized by former Station WBBY-FM, the station which one of the mutually-exclusive applicants is intended to replace.<sup>1</sup> The site thus specified is short-spaced 6.84 kilometers to Station WTTF-FM, Tiffin, Ohio. ORA concedes that ASF acknowledged the short-spacing, and further concedes that ASF proposed a directional

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<sup>1</sup> ASF believes that ORA has filed similar Petitions against each applicant specifying the former Station WBBY-FM site.

antenna such that the requirements of Section 73.215 of the Rules are completely met.

2. Although ORA does not explain its rationale, its position appears to be that, notwithstanding the provisions of Section 73.215, mutually-exclusive applicants must still specify fully-spaced sites or demonstrate that such sites -- or less short-spaced sites -- are not available. Indeed, ORA even states that allowing directional antennas, where fully-spaced sites are available, "would effectively repeal Section 73.207 . . .". In fact, Section 73.207 begins "Except for assignments made pursuant to §§73.213 or 73.215 . . .". Thus, even that Section acknowledges the contour protection provisions of Section 73.215.

3. In order to grant the relief sought by ORA, the Chief, Audio Services Division, would have to conclude that the Commission did not mean what it said in adopting Section 73.215. The very introduction to the **Report and Order** sets forth the purpose of the rules:

"The Commission herein adopts new rules permitting an applicant for commercial FM facilities to request the authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference in accordance with well established criteria. The necessary protection may be afforded by taking advantage of terrain elevation in the direction of the short-spaced station(s), by an appropriate reduction in operating facilities (power and/or antenna height), by use of a directional

antenna, or by any combination of  
these means."

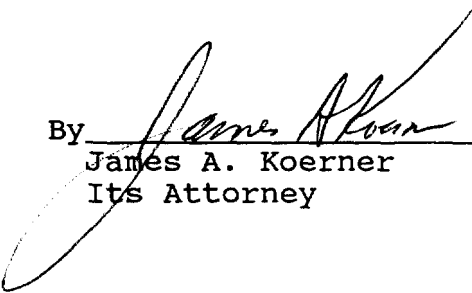
MM Docket No. 87-121. 4 FCC Rcd 1681 (1988). para. 1. Again. at

while another was short-spaced by 14.4 kilometers. Processing pursuant to Section 73.215 would not assist that applicant since, at least temporarily, the Commission has set 8 kilometers as the maximum amount of short-spacing. Further, the applicant could not demonstrate that fully-spaced sites were not available. Similarly,

Respectfully submitted,

**ASF BROADCASTING CORP.**

By

  
James A. Koerner  
Its Attorney

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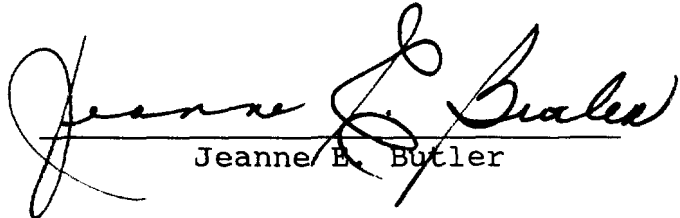
**April 7, 1992**

**CERTIFICATE OF SERVICE**

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **OPPOSITION TO THE PETITION TO DENY AND DISMISS** were sent this 7th day of April, 1992 via first class mail, postage prepaid to the following:

Dennis Williams, Chief  
FM Branch  
Federal Communications Commission  
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Jeanne E. Butler